In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 241

JAMES B. CLOWER, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The court of appeals' order denying a petition for a writ of error *coram nobis* (Pet. 7–9) is reported at 329 F. 2d 873. The earlier decree of the court of appeals, enforcing a settlement agreement approved by the Board (Pet. 6), is unreported.[1]

JURISDICTION

The court of appeals order denying the petition for a writ of error *coram nobis* (Pet. 7–9) was entered on

[1] The settlement agreement, and the Board order entered pursuant thereto, are set forth in Appendix B, *infra*, pp. 13–24.

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April 1, 1964. On July 1, 1964, Mr. Justice Clark extended the time for filing a petition for a writ of certiorari to and including July 6, 1964. The petition was filed on July 2, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The National Labor Relations Board, the union, and the employer entered into an agreement in settlement of unfair labor practice charges brought by the union against the employer. The Board order made pursuant to this agreement required the employer to reinstate certain strikers. This order was enforced by the court of appeals. The question presented is whether the court of appeals properly refused to upset the settlement agreement upon the subsequent petition of employees who had replaced the strikers and who were displaced as a result of the employer's compliance with the agreement to reinstate the strikers.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth in Appendix A, *infra*, pp. 9–12.

STATEMENT

In September, 1961, about 400 of the production employees at the Rockwood, Tennessee, plant of Tennessee Products and Chemical Corporation, Roane Electric Furnace Division ("the Company"), who were represented by the United Steelworkers of America, AFL–CIO ("the Union"), went on strike. The

Company fired the strikers and hired approximately 200 replacements, among whom were the present petitioners. (Pet. 2.)

The Union filed charges with the Board, alleging that the Company had violated Section 8(a)(3) of the National Labor Relations Act by discharging the strikers, and a complaint was issued by the General Counsel of the Board. After hearing, the trial examiner, on June 14, 1962, issued his report. He found that 77 of the employees were justified in striking—notwithstanding a no-strike clause in the collective bargaining agreement—because their working conditions were abnormally dangerous,[1] but that the strike by the remaining employees was in breach of contract. He recommended that the 77 employees be reinstated with back pay. Exceptions to the examiner's report were filed with the Board. (Pet. 3, 7–8.)

On February 19, 1963, the Company, the Union, and a representative of the Board entered into a formal settlement of the unfair labor practice charges. In pursuance of this settlement, the Board entered an order [1a] on March 22, 1963, which directed, *inter alia*, that the Company (1) reinstate all 77 employees found to have been directly affected by the abnormally dangerous working conditions; (2) reinstate another group of employees who had participated in the work stoppage; and (3) terminate the discharges of the remaining strikers not thus reinstated and place them

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[1] See Section 502 of the Labor Management Relations Act (*infra*, p. 12).

[1a] The settlement agreement and the Board order are set forth in Appendix B, *infra*, pp. 13–24.

on a master seniority list. The Board's order provided further that, in effecting the reinstatements, "there shall be laid off an equivalent number of employees hired for the first time after September 11, 1961 [five days after the beginning of the strike]." (Appendix B, *infra*, p. 21.) In addition to making provision for the Board order, the settlement agreement gives consent to a court of appeals decree enforcing the Board order. (*Id.* at p. 15.) On April 8, 1963, the court of appeals entered such a consent decree. (Pet. 6, 7.) The Company thereafter complied with all the portions of the decree.

In December, 1963, petitioners, who were displaced when the Company reinstated the strikers, requested the court of appeals to issue a writ of error *coram nobis* setting aside the April 8 decree enforcing the Board's order. Petitioners alleged that they had not received actual notice of the settlement agreement when it was pending before the Board, that they therefore had no opportunity to present arguments to the Board as to why the settlement agreement should not have been approved by the Board, and that they had not received official notice of the court of appeals' enforcement proceeding and were not joined as parties thereto. They alleged that the failure to notify them of the pending settlement agreement before the Board was the product of a "conspiracy" between the Board, the Union and the Company. In addition, petitioners alleged that the settlement agreement was illegal because the Union did not represent the Company's employees when the agree-

ment was made.[3] (Appendix C, *infra,* pp. 25–31.) The court of appeals refused to issue the writ or to vacate its earlier decree (Pet. 7–9), holding that the court had no jurisdiction in such a case to entertain an original application for a writ of error *coram nobis* and that "apart * * * from procedural labels, we do not think that the present address to us calls for or permits action on our part."

ARGUMENT

The decision of the court below is correct. No issue warranting review by this Court is presented.

Petitioners asked the court of appeals to set aside its previous enforcement of the Board order on two grounds: (1) that the settlement agreement upon which the Board order was predicated was illegal because the Union was not the bargaining representative of the Company's employees when the agreement was made; (2) that petitioners had no adequate opportunity to participate in the Board proceedings leading up to the settlement agreement. Neither of these grounds is substantial.

With regard to the first ground of attack upon the Board order, it is wholly irrelevant in considering the legality of the settlement whether or not the Union

[3] Before filing the petition for a writ of error *coram nobis*, the same group of employees, plus Harold Stamey, filed a suit in the Chancery Court, Hamilton County, Chattanooga, Tennessee, against the Company; that court dismissed the complaint. Thereafter, Stamey filed a charge alleging in substance that the Company, by complying with the consent decree, violated Sections 8 (a) (1) and (2) of the Act (Board Case No. 10–CA–5445); the General Counsel of the Board dismissed the charge. (Pet. 3, 8–9.)

was the bargaining representative of the Company's employees at the time the agreement was reached. The Union properly participated in the settlement as the charging party before the Board. The Act contains no requirement that a union be the bargaining representative of a group of employees in order to bring or to participate in unfair labor practice charges which seek merely to remedy discrimination against the employees and not to impose a bargaining obligation on the employer. In any event, the Union, which concededly was the bargaining agent of the Company's employees when the strike commenced, continued to enjoy that status, if, as the Union charged, the discharge of the strikers and their replacement by non-union workers constituted an unfair labor practice. The Board was therefore clearly entitled to permit the Union to participate in the settlement.

With regard to petitioners' second ground of attack upon the Board order, petitioners had no absolute right to participate in the Board proceeding for they were not indispensable parties. *National Licorice Co.* v. *National Labor Relations Board*, 309 U.S. 350, 366. Even if, as alleged, the Company made contractual promises to these petitioners (Pet. 9), their private rights against the employer, if any, were left to adjudication in tribunals other than the Board. *Ibid.* As to possible intervention in the Board proceeding, section 10(b) of the Act provides that "[i]n the discretion of the member, agent, or agency conducting the

hearing or the Board, any other person [in addition to the Board, the charging party, and the party charged with the unfair practice] may be allowed to intervene in the said proceeding and to present testimony." Nevertheless, petitioners, who do not claim that they lacked actual notice of the pendency of the Board proceeding against the Company, made no attempt to intervene in that proceeding under section 10(b). Having thus failed even to attempt intervention before the Board, petitioners may not now complain of their lack of participation in the proceedings.

Even if petitioners had presented substantial reasons for questioning the validity of the Board's order, their right to compel the court of appeals to reopen its consideration of the order eight months after the court's decree of enforcement would be open to serious doubt. In this case, where petitioners' attacks were insubstantial, the court of appeals clearly committed no error in refusing to reverse its previous decree and deny enforcement to the Board order.

CONCLUSION

For the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
LAURENCE S. GOLD,
Attorney,
National Labor Relations Board.

JULY 1964.

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

SEC. 10.

* * * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member there-

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of, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: * * * The person so complained of shall have the right to file an answer to the * * * complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. * * *

SEC. 10 (e) [As amended, 72 Stat. 945.] The Board shall have power to petition any court of appeals of the United States, * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evi-

dence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. * * * Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the * * * Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part of relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the

Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * * * *

The relevant provisions of the Labor Management Relations Act, 1947, as amended (61 Stat. 162, 29 U.S.C. 141, 143), are as follows:

SEC. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

APPENDIX B

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 10–CA–4850

TENNESSEE PRODUCTS & CHEMICAL CORPORATION, ROANE ELECTRIC FURNACE DIVISION

AND

UNITED STEELWORKERS OF AMERICA, AFL–CIO

STIPULATION

It is hereby stipulated and agreed by and between Tennessee Products & Chemical Corporation, hereinafter referred to as the "Employer", the United Steelworkers of America, AFL–CIO, hereinafter referred to as the "Union", and Counsel for the General Counsel of the National Labor Relations Board, Tenth Regional Office, that:

1. Upon a charge filed by the Union in Case No. 10–CA–4850, on November 13, 1961, and served upon the Employer, receipt of which charge is hereby acknowledged by said Employer, the General Counsel of the National Labor Relations Board, hereinafter referred to as the "Board", by the Regional Director for the Tenth Region, acting pursuant to authority granted in Section 10(b) of the Act, hereinafter referred to as the "Act", and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, issued a Complaint and Notice of Hearing on December 28, 1961, receipt of which Complaint and Notice

of Hearing is hereby acknowledged by the Employer.

2. Thereafter, pursuant to due notice, a hearing was held before the Board's Trial Examiner Owsley Vose at Knoxville, Tennessee, on February 12–16, 1962. At such hearing, all the parties hereto appeared, were represented by counsel, and were afforded an opportunity to be heard, to examine and cross-examine witnesses, and to present oral argument. Subsequent to the hearing, all parties hereto filed briefs with the Trial Examiner.

3. On or about June 14, 1962, the Trial Examiner issued, and caused to be served upon the parties hereto, an Intermediate Report and Recommended Order, receipt of which Intermediate Report and Recommended Order is hereby acknowledged by all the parties hereto, wherein he recommended that the allegations of the Complaint be sustained in part and that they be dismissed in part. On the date of issuance of said Intermediate Report, the Board issued an Order, receip of which Order is hereby acknowledged by all the parties hereto, transferring the case to and continuing it before the Board.

4. Thereafter, all the parties hereto, pursuant to Section 102.46 of the Board's Rules and Regulations, filed briefs and exceptions with the Board in support of their respective positions as to the allegations of the Complaint and findings and recommendations of the Trial Examiner.

5. The parties hereto hereby agree that, contingent upon approval of the instant Stipulation by the Board and entry of an Order by the Board, they hereby withdraw all pending exceptions and briefs now before the Board and expressly waive any and all further and additional rights to hearings, intermediate reports, the filing of exceptions and briefs, oral arguments before the Board, the making of

findings of fact and conclusions of law by the Board, and any and all further procedure and proceedings before the Board. Further, the parties hereto expressly waive any and all further and additional rights that they may have under Sections 10 (d), (e) and (f) of the Act, and under Sections 102.52 through 102.59 of the Board's Rules and Regulations, Series 8 as amended, except as herein otherwise indicated.

6. The parties hereto agree that upon this Stipulation and the record, as hereinafter described, the Board may, without further notice of proceedings herein, enter an Order that is in conformity with the terms and conditions of this Stipulation and which conforms to the language hereinafter set forth under the provisions of this Stipulation entitled "Order".

7. The parties hereto hereby agree that the Board, in the event that it approves the instant Stipulation, shall have the right to apply to or petition the United States Court of Appeals for the District of Columbia, or any other United States Court of Appeals of an appropriate circuit, for a Decree enforcing the Board's Order issued in conformity with the terms of this Stipulation. All the parties hereto waive their rights to oppose or defend against the entry of such a Decree, and all parties hereby waive their rights to receive notice of the filing of an application for the entry of such Decree, provided that such Decree is in conformity with the words and figures set forth hereinafter under the subsection hereof entitled "Order"[1].

8. The parties hereto stipulate and agree that the

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[1] It is understood and agreed that in the event the Board's Order is enforced by a Decree of a United States Court of Appeals that therein there shall be substituted for the words "Pursuant to a Decision and Order", the words "Pursuant to a Decree of the United States Court of Appeals Enforcing an Order * * *."

charge, the Complaint, the Answer, the Intermediate Report, and this Stipulation shall constitute the entire record herein. All parties hereto agree that the Board, in the event that it seeks to exercise its power to petition for enforcement pursuant to Section 10(e) of the Act, shall only be required to file with the Court a copy of the instant Stipulation and the Order issued in conformity thereto.

9. All the parties hereto agree that in the event the Board petitions for and is successful in obtaining a Decree from an appropriate United States Court of Appeals, such Decree will be deemed as a full and final disposition of any and all issues covered by the instant charges, and all parties hereto waive and relinquish any and all rights to appeal from or contest such Decree.

10. It is the intention of all the parties herein and hereto to settle and adjust all the issues raised by the Union's charge, the General Counsel's Complaint, and the Intermediate Report, alleging the commission of unfair labor practices by the Employer. All the parties to the instant Stipulation acknowledge that the instant settlement is being entered into by each of them and all of them for the purpose of resolving in an equitable manner consistent with the interests of the employees, the parties and the purposes of the National Labor Relations Act, the issues between them raised by the Charge, the Complaint and the Intermediate Report and also for the purpose of avoiding the onerous and burdensome delays and expenses of the extensive litigation that would otherwise result from further processing of this matter.

11. It is understood and agreed to by all the parties hereto that the action of the Employer in entering into this Agreement does not in any way constitute an admission on its part that it, its agents, servants

or employees have engaged in, or are engaged in, any acts or conduct which are violative of the unfair labor practice provisions of the Act. It is understood and agreed to that the instant Stipulation is not to be construed as an acknowledgement by the Employer as to the validity of the allegations of General Counsel's Complaint, and that the Employer enters into the instant Stipulation merely for the purpose of compromise and in order to avoid the heavy costs and expenses of continued litigation.

12. (a) The Employer is, and has been at all times herein material, a corporation duly organized under and existing by virtue of the laws of the State of Tennessee.

(b) The Employer annually ships goods valued in excess of $50,000.00 from its manufacturing facilities in Tennessee to points and persons located outside such State. It is stipulated, conceded and agreed to by all the parties herein that the Employer is engaged in commerce within the meaning of Sections 2 (6) and (7) of the Act.

13. It is stipulated to and agreed that the Union is, and has been at all times material hereto, a labor organization within the meaning of Section 2(5) of the Act.

14. This Stipulation, together with the various other documents referred to heretofore above and hereinafter, constitutes the entire record in the instant proceedings. It is further agreed that this Stipulation contains the entire Agreement between the parties disposing of the alleged unfair labor practices and is a full and final disposition of all of the allegations contained in the General Counsel's Complaint and the issues raised thereby, there being no agreement of any kind, verbally or otherwise, which alters this Stipulation.

15. Upon this Stipulation and the record herein, and without further notice or proceedings, all parties hereto specifically hereby waiving requirements for any such notice, the Board shall enter an Order providing substantially as follows:

[ORDER OMITTED]

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 10–CA–4850

TENNESSEE PRODUCTS & CHEMICAL CORPORATION, ROANE ELECTRIC FURNACE DIVISION

AND

UNITED STEELWORKERS OF AMERICA, AFL–CIO

DECISION AND ORDER

Statement of the Case

On June 14, 1962, Trial Examiner Owsley Vose issued his Intermediate Report and Recommended Order in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices, and recommending that it take specific action to remedy such unfair labor practices. Thereafter, all parties filed exceptions and briefs with the Board in support of their respective positions as to the allegations of the Complaint and findings and recommendations of the Trial Examiner.

Thereafter, on February 18, 1963, Tennessee Products & Chemical Corporation, herein called the Respondent; United Steelworkers of America, AFL–CIO, herein called the Union; and the General Counsel of the National Labor Relations Board, herein called the Board, entered into a Stipulation, in settle-

ment of the case, subject to approval of the Board, providing for the entry of a consent order by the Board and a consent decree by any appropriate United States Court of Appeals. The parties withdrew their exceptions and briefs and waived all further and other procedure before the Board to which they may be entitled under the Act, and the Rules and Regulations of the Board, and waived their right to contest the entry of a consent decree or to receive further notice of the application therefor.

The aforesaid Stipulation is hereby approved and made a part of the record herein, and the proceeding is hereby transferred to and continued before the Board for the entry of a Decision and Order, pursuant to the provisions of the said Stipulation.

Upon the basis of the aforesaid Stipulation and the entire record in the case, the Board makes the following:

FINDINGS OF FACT

1. The business of the Respondent

Respondent, Tennessee Products & Chemical Corporation, Roane Electric Furnace Division, a Tennessee corporation, annually ships goods valued in excess of $50,000.00 from its manufacturing facilities in Tennessee to points and persons located outside the State of Tennessee. The Respondent admits, and we find, that it is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. The labor organization involved

United Steelworkers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Upon the basis of the above findings of fact, the Stipulation, and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

The Respondent, Tennessee Products & Chemical Corporation, Roane Electric Furnace Division, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discharging employees for engaging in strike or concerted activities protected by the Act, or in any like or related manner interfering with, restraining or coercing employees in the exercise of their right to self-organization, to form, join or assist any labor organization to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) Discouraging membership in the International Union, United Steelworkers of America, AFL-CIO, or in any other labor organization, by discharging employees or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment.

2. Take the following affirmative action which the Board finds will effectuate the policies of the National Labor Relations Act, as amended:

(a) As promptly as possible consistent with operating requirements, recall the employees found by the Trial Examiner to have been affected by the alleged abnormally dangerous working

conditions at its plant on September 5 and 6, 1961. The names of all such affected employees (seventy-seven in number) are contained in Appendix "B" hereto, which is hereby incorporated into this Order as a part hereof. The employees recalled pursuant to this Section 2(a) shall be recalled in an order consistent with seniority subject to operating requirements and there shall be laid off an equivalent number of employees hired for the first time after September 11, 1961.

(b) In addition to the recall of the employees provided for in Paragraph 2(a) above, as promptly as possible consistent with operating requirements, recall a number of employees who participated in the work stoppage which shall represent the difference between said number of seventy-seven (77) and the number which is equal to two-thirds (⅔) of the total number of employees actively at work in the bargaining unit on the date of this Order. The employees recalled pursuant to this Section 2(b) shall be recalled in an order consistent with seniority subject to operating requirements and there shall be laid off an equivalent number of employees hired for the first time after September 11, 1961.

(c) Terminate all discharges communicated to its employees beginning September 11, 1961 and arising out of the work stoppage beginning on or about September 6, 1961. Pay to each of said employees who was actively at work in the bargaining unit on September 6, 1961 an amount of money herein agreed to be the net amount due him as a result of such discharge. The names of all such employees are contained in Appendix "C" hereto, which is hereby incorporated into this Order as a part hereof, and the amount of money

due each such employee appears opposite such employee's name.

The employees whose discharges are terminated pursuant to this Paragraph 2(c) but who are not recalled to work pursuant to the provisions of Paragraphs 2 (a) or (b) hereof shall be restored to the master seniority list referred to in Paragraph 2(d) below.

(d) Establish a master seniority list containing the names of all persons who were employees in the collective bargaining unit on September 6, 1961 and all persons hired thereafter who are now at work and those who have rights to recall. Such seniority list is attached hereto as Appendix "D", which is hereby incorporated into this Order as a part hereof. The employees on said list have been ranked in order of seniority for recall purposes. There are no other employees or former employees who have any seniority rights as of the date of this Stipulation.

(e) In the event that a person to be recalled in accordance with the provisions of this Order is not qualified to do the work, the next highest ranked employee qualified to do the work will be recalled. The Company is directed to work out reasonable notice and reporting requirements with the Union in order to implement the provisions of this Order.

(f) Recalls under the provisions of Paragraphs 2 (a) and (b) hereof will be accomplished as quickly as possible and in any event within (30) days from the date the job becomes available and the Employer is advised of the employee's availability to perform such job.

(g) A recalled employee shall be required to be examined by a Company physician for the purpose of determining whether he has incurred any injury or illness which will prevent him from performing his job.

(h) Post in conspicuous places in its plant at Rockwood, Tennessee, including all places where notices to employees are posted, copies of the Notice attached hereto as Appendix "A", which Appendix is hereby incorporated into and is to become a part of this Order. Copies of said Notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the Employer's representative, be posted by it immediately upon receipt thereof, and maintained by it for at least 60 consecutive days thereafter. Reasonable steps shall be taken by the Employer to insure the said Notices are not altered, defaced or covered by any other material.

(i) Upon entry of a Court Decree enforcing this Order, the Employer shall notify the Regional Director for the Tenth Region, in writing, within twenty (20) days after notice of entry of such Decree, as to the steps taken by the Respondent to comply herewith.

Dated, Washington, D.C., March 22, 1963.

FRANK W. McCULLOCH,
Chairman,

PHILIP RAY RODGERS,
Member,

BOYD LEEDOM,
Member,

JOHN H. FANNING,
Member,

GERALD A. BROWN,
Member,

National Labor Relations Board.

[SEAL]

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 15,343

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

TENNESSEE PRODUCTS & CHEMICAL CORPORATION, ROANE ELECTRIC FURNACE DIVISION, RESPONDENT

PETITION FOR WRIT OF ERROR CORAM NOBIS

Petitioners for a writ of error coram nobis, who seek to intervene in this cause, are citizens of Tennessee.

The National Labor Relations Board, which is mentioned as the petitioner in this cause, is an administrative body duly constituted by the Congress of the United States for the purpose of enforcing certain statutes of the United States dealing with matters of labor relations. The Tennessee Products & Chemical Corporation, Roane Electric Furnace Division, which appears as respondent in this case, is a Tennessee corporation having plants in Tennessee and engaging in interstate commerce so as to be within the jurisdiction of the National Labor Relations Board. The United Steelworkers of America, AFL–CIO, which is mentioned in the transcript of the record in the proceedings before the National Labor Relations Board at the time of the consent decree, is a labor

organization doing business in Tennessee and throughout the United States.

Petitioners respectfully file this their petition for a writ of error coram nobis in this cause and would show unto the Court the following:

This Honorable Court heretofore and on the 8th day of April, 1963, put down an order in this cause, said order being designated a consent decree.

This order was put down without any notice thereof being given to petitioners and without their being a party thereto, although their rights were involved therein, as hereinafter set forth:

1. Petitioners are a part of a group of approximately two hundred (200) employees of Tennessee Products & Chemical Corporation, Roane Electric Furnace Division.

2. In September 1961 the United Steelworkers of America, AFL–CIO, hereinafter called the Union, had a contract as representing the employees of Tennessee Products & Chemical Corporation, Roane Electric Furnace Division (which will hereinafter be called Tennessee Products), said contract providing that the Union would be recognized as representing the company's plant, said strike being in violation of provision for wages, hours and working conditions. This contract provided that it would terminate on September 15, 1962.

3. In September 1961, the Union struck at the company's plant, said strike being in violation of the then existing labor contract.

4. Following the calling of this strike, the company, which had been repeatedly harrassed by a series of such illegal strikes, discharged the approximately four hundred fifteen (415) employees who had gone on said strike and began to replace said strikers with other

workers, most of whom had never worked for the company before.

5. In hiring these workers to replace the discharged strikers, the company represented that it was hiring them on a permanent rather than a temporary basis, and that if said employees would accept employment, the company would protect them in their job rights and in the event the Union sought to force the re-employment of the discharged employees through the medium of the National Labor Relations Board, the company would contest such re-employment through the Supreme Court of the United States.

6. Petitioners and their fellow employees, totaling approximately two hundred (200), accepted employment by the company under these terms and went to work for the company, with the result that with a work force of less than fifty percent (50%) of that formerly employed, the company operated with a better production record than it had prior to the strike.

7. Thereafter the Union filed charges against the company before the National Labor Relations Board, claiming that the company's action in discharging the four hundred fifteen (415) strikers was unlawful. This was done in Case 10–CA–4850, to which reference is made, the contents of this file having heretofore been filed with this Court, according to the consent decree.

8. Petitioners were not parties to the aforesaid proceedings before the National Labor Relations Board.

9. As reflected by the file in said case, a hearing officer was assigned to hear the case and after hearing the same, he ruled that although approximately seventy-seven (77) of the discharged strikers were justified in striking, because of dangerous working conditions, and should be rehired, all the rest of the

four hundred fifteen (415) strikers had been lawfully discharged. He therefore recommended that the company be required to reinstate the seventy-seven (77) and to pay them back pay.

10. Thereafter, the company announced to these petitioners and their fellow employees that the decision would be appealed to the Courts.

11. However, instead of appealing said decision, which was handed down in the summer of 1962, the company, without advising petitioners and their fellow employees, subsequently entered into a conspiracy and deal with the Union and with representatives of the National Labor Relations Board which violated the rights of the petitioners and their fellow employees and unlawfully and unconstitutionally deprived them of their rights and their jobs, said conspiracy consisting of the actions hereinafter alleged.

12. The company, being fearful that it would have to pay the sum of approximately one million dollars to the 77 employees whom it had been ordered to rehire, agreed that if the Union would drop the demands insofar as said back pay was concerned, the company would not only rehire those 77 Union members who had been held to have been wrongfully discharged, but would also rehire substantially all the other strikers who had been ruled to have been lawfully discharged and would discharge petitioners and their fellow employees in order to effect this.

13. The Union, the company and the National Labor Relations Board (secretly, insofar as the then company employees were concerned) agreed to this action, thus depriving the 77 wrongfully discharged employees of their rights to back pay and also depriving petitioners and their fellow employees of their rights and their jobs, illegally and unconstitutionally.

14. This action was illegal because in March of

1963, when this agreement was reached and a new contract signed by the company and the Union, the Union did not actually represent the employees of the company because of the fact that their contract with the company had expired in September of 1962 and it was obvious on the face of the record that thereafter they were not the bargaining agency for the employees of the company, who at that time consisted of petitioners and their fellow employees.

15. The action was unconstitutional because of the Fifth Amendment to the Constitution of the United States in that it deprived petitioners and their fellow employees of their property rights and their jobs without due process of law in that they were not advised as to what was being done and were given no opportunity to appear and present their side of the case whatsoever, said action being taken by the National Labor Relations Board and the company and the Union in a secret and surreptitious manner insofar as these petitioners and their fellow employees were concerned, it being some weeks later before petitioners and their fellow employees found out anything about it.

16. The individuals involved who acted on behalf of the parties in this cause were Marcel Mallet-Prevost, Assistant General Counsel of the National Labor Relations Board, and Joseph Bell, attorney for the company. Petitioners herein do not know the name of the individual who acted on behalf of the Union, but charge that said information can be furnished by the individuals heretofore named.

17. Following their discovery of the situation, petitioners and their fellow employees employed counsel who undertook to obtain relief through the National Labor Relations Board by filing a charge with that

organization on August 23, 1963, it being hoped that the Labor Board would take some action to undo the grossly unfair and illegal arrangement that had been made and entered into.

18. However, the Regional Director of the National Labor Relations Board in Atlanta refused to issue a complaint.

19. Thereafter, an appeal was taken to the General Counsel of the National Labor Relations Board, and under date of November 6, 1963, a ruling was made by the office of the General Counsel that they were sustaining the ruling of the Regional Director. A copy of the charge that was filed with the National Labor Relations Board and a copy of the ruling by the office of the General Counsel of the National Labor Relations Board are attached hereto and made a part of this petition, but not for copy.

20. Having exhausted their efforts to obtain relief through the National Labor Relations Board, these petitioners now come to this Honorable Court asserting that the consent decree heretofore filed on April 8, 1963, should be set aside because of the facts and circumstances hereinbefore set forth, and the whole matter reopened to the end that justice be done.

WHEREFORE, these petitioners (all of whom have lost their jobs with the company as a result of the aforesaid conspiracy) file this their petition for a writ of error coram nobis and ask that this Honorable Court set aside the consent decree heretofore entered and do whatever is required by law and justice.

CHAMBLISS, CHAMBLISS & HODGE,
By JAC CHAMBLISS,
Attorney for Petitioners.

STATE of TENNESSEE,
County of Hamilton:

James R. Clower, Dan McWilliams and Clyde Rector, being first duly sworn, make oath that they are petitioners in the foregoing petition for a writ of erro coram nobis and that they have read the said petition and that the facts therein set forth are true to the best of their knowledge, information and belief.

Sworn to and subscribed before me this ---- day of December, 1963.

Notary Public.

My commission expires:

U.S. GOVERNMENT PRINTING OFFICE:1964